

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Robert L. Myers
and Betty A. Myers,*

Chapter 13
Bky. No. 04-33794

Debtor(s).

**NOTICE OF HEARING AND MOTION
OBJECTING TO CLAIM OF CREDITOR
(CLAIM NO. 10)**

TO: Entities specified in Local Rule 3007-1.

1. Terri A. Georgen-Running, attorney for the Debtors in the above referenced case moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Gregory F. Kishel, Courtroom No. 228B - United States Courthouse, 316 S. Robert Street, St. Paul, Minnesota on **November 29, 2004 at 1:30 p.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than November 22, 2004, which is seven (7) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays, or filed and served by mail not later than November 19, 2004, which is ten (10) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on June 28, 2004 and is now pending before this court.

5. This motion arises under 11 U.S.C. §§502 and 704, FED. R. BANKR. P. 3002 and 3007 and Local Rule 3007-1. This motion is filed under FED. R. BANKR. P. 9014 and 9014 and Local Rule 9013. The Debtors requests relief with respect to Claim No. 10 filed in the Debtor(s)' case.

6. New York State Department of Taxation and Finance ("Claimant") filed a proof of claim on August 13, 2004, asserting an unsecured priority claim in the amount of \$859.58, and a secured claim in the amount of \$9,053.50 (the "Claim")¹. A copy of the Claim is attached hereto.

7. The Debtors previously lived in the State of New York, but now live in Minnesota. The Debtors do not own any real or personal property located in the state of New York.

8. Prior to this bankruptcy filing, Claimant did not file any documents to perfect its security interest in any personal property of the Debtors located in the state of Minnesota.

9. As a result, there is no basis for the secured portion of Claim No. 10.

10. Undersigned attorney for the Debtors spoke with Benjamin Hovey – Claimant's representative - on October 18, 2004 regarding the secured portion of Claim No. 10. Mr. Hovey informed the undersigned the Claimant would submit a response of

¹ The Debtors do not dispute the priority portion of the Claim or the general unsecured portion of the Claim.

“no objection” to treatment of the secured portion of Claim No. 10 as an unsecured non-priority claim.

WHEREFORE, the Debtors respectfully request that the Court disallow the secured portion of Claim No. 10 as a secured claim and direct the Chapter 13 Trustee to pay the secured portion of Claim No. 10 as an unsecured non-priority claim and such other relief as may be just and equitable.

Dated: October 26, 2004

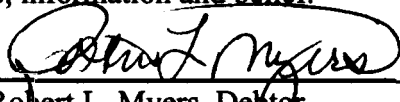
GEORGEN-RUNNING LAW FIRM
A Professional Corporation

By: /s/ Terri A. Georgen-Running
Terri A. Georgen-Running (No. 238338)
P.O. Box 16355
St. Paul, MN 55116
(651) 699-6980
(651) 292-1234 *Facsimile*

ATTORNEYS FOR THE DEBTORS

VERIFICATION. I, Robert L. Myers, the moving party named in the foregoing notice of hearing and motion declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 26, 2004


Robert L. Myers, Debtor



**New York State Department of
Taxation and Finance**

Bankruptcy Section
P O Box 5300
Albany NY 12205-0300

(518) 457-3160

Statement date: 8/9/2004

Case number: 04-33794 GFK
Refer to this number for inquiries

Total claim amount: \$10,030.63

Taxpayer ID#: 9040
8512

Pre-Petition Proof of Claim

UNITED STATES BANKRUPTCY COURT
TOTAL DISTRICT OF MINNESOTA
210 FEDERAL BUILDING
316 NORTH ROBERT STREET
ST. PAUL, MN 55101

RECEIVED
04 AUG 13 AM 9:01
U.S. BANKRUPTCY COURT
ST. PAUL, MN

This is a statement of tax liabilities for MYERS-ROBERT L and MYERS-BETTY. Penalty and interest for each liability is computed to 6/28/2004.

Secured Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type	Warrant Date	Cnty
INCOME	12/31/1993	L-009919391-2	0.00	3.68	1,076.18	1,079.86	ACT	06/13/1995	NASS
INCOME	12/31/1994	L-010758194-5	948.00	248.53	1,033.11	2,229.64	ACT	12/18/1995	NASS
INCOME	12/31/1994	L-012611915-1	0.00	45.24	32.03	77.27	AUD	10/06/2000	NASS
INCOME	12/31/1998	L-017285062-6	0.00	0.00	80.18	80.18	ACT	10/06/2000	NASS
INCOME	12/31/1999	L-018795932-7	1,359.00	381.55	483.08	2,223.63	ACT	08/27/2001	NASS
INCOME	12/31/2000	L-020391202-5	2,391.00	422.35	549.57	3,362.92	ACT	02/06/2003	NASS
SubTotal \$						9,053.50			

Unsecured Priority Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type
INCOME	12/31/2002	L-022588403-8	794.62	0.00	64.96	859.58	ACT
SubTotal \$						859.58	

(Continued on back)

Pre-Petition Proof of Claim (continued)

General Unsecured Liabilities

Tax Type	Period End	Notice Number	Tax	Penalty	Interest	Total	Type
INCOME	12/31/2002	L-022588403-8	0.00	117.55	0.00	117.55	ACT
					SubTotal \$	117.55	

Current Annual Interest Rates by Tax Type: Personal Income - 6%
Liability Type Descriptions: ACT - Actual Return Filed, AUD - Audit Assessment

Marlene Centella

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Robert L. Myers
and Betty A. Myers,*

Chapter 13
Bky. No. 04-33794

Debtor(s).

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Terri A. Georgen-Running, declare that on the date indicated below, I served the following:

(1) Notice of Hearing and Motion Objecting to Claim of Creditor; (2) Unsworn Declaration for Proof of Service; and (3) Proposed Order

upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

UNITED STATES TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH FORTH STREET
MINNEAPOLIS, MN 55415

NEW YORK STATE DEPARTMENT
OF TAXATION AND FINANCE
BANKRUPTCY DEPARTMENT
P.O. BOX 5300
ALBANY, NY 12205

Ford Motor Credit
c/o Stewart Zlimen & Jungers
430 Oak St. #200
Minneapolis, MN 55403

And I declare under penalty of perjury that the foregoing is true and correct.

Date: October 26, 2004

e/ Terri A. Georgen-Running

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

*In re: Robert L. Myers
and Betty A. Myers,*

Chapter 13
Bky. No. 04-33794

Debtor(s).

ORDER

At St. Paul, Minnesota, _____, 2004

The above-entitled matter came before the Court on the Objection to Claim of Creditor filed by the Debtors. Appearances, if any, were as noted upon the record. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The secured portion of Claim No. 10 is disallowed as a secured claim; and the Chapter 13 Trustee is directed to pay the secured portion of Claim No. 10 (\$9053.50) as an unsecured non-priority claim.

Judge Gregory F. Kishel
UNITED STATES BANKRUPTCY JUDGE